

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13499 of 2022

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1. Ajay Paswan Son of Late Chandeshwar Ram, Resident of Raja Bazar, Khagri, Salempur Dumra, P.S.- Shastri Nagar, District - Patna.
 2. Pankaj Kumar Son of Rajendra Prasad, Resident of Mahaveer Nagar, 70 Feet, Bhart Petroleum Road, Anisabad, P.S.- Phulwari, District- Patna.
 3. Sanjay Kumar Son of Shyam Babu Prasad, Resident of in front of Masjid, Near Pokhar Bhawan, Rajapur, Mainpura, P.S. - Budha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Public Health Engineering (Mechanical) Circle, Patna.
4. The Superintending Engineer, Public Health Planning and Design Circle - 03, Patna.
5. The Executive Engineer, Public Health (Mechanical) Division, Patna.
6. The Executive Engineer, Public Health (Mechanical) Division, Gaya.
7. The Executive Engineer, Public Health (Mechanical) Division, Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raja Ram Rai, Adv.
For the opposite party : Mr. Arvind Ujjwal (Sc4)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 03-10-2024

Non-payment of ACP/MACP and cancellation of promotion for not having Computer efficiency certificate is the issue involved in the instant writ petition.



2. The petitioners, three in number, were employed as Lower Division Clerk in Public Health Engineering Department. They were initially granted ACP/MACP and petitioner nos. 1 and 3 were promoted to the post of Upper Division Clerk and petitioner no. 2 was promoted as Principal Clerk. By an order dated 10th February, 2021, the order of granting ACP to the petitioners were cancelled and they were reverted back to their original post in cancellation of promotion.

3. It is submitted by the learned Advocate on behalf of the petitioners that the respondents took such step which amounts to a penal action, on the ground that the petitioners could not submit compute efficiency test certificate of the DOEACC.

4. The learned Advocate on behalf of the petitioners next refers to the ***Bihar Government Servants (Computer Competency for Recruitment and Confirmation) Rules, 2011***. He specifically refers to Rule 4 of the said Rules which runs thus:-

“4. Qualification of Computer Competency for working employees:

(a) Notwithstanding any otherwise provision contained in a Service/Cadre Rules of the State Government where passing of Computer competency test is required for confirmation, the certificate for passing a Course of DOEACC Society, which shall be determined by the Information Technology Department, shall be necessary for



confirmation in each such service/Cadre, and separate computer competency test shall not be required.

(b) The government servants who are already confirmed, and for whom it is essential to pass computer competency test for getting next increment, the certificate of passing a course of DOEACC Society, which shall be determined by the Information Technology Department shall be necessary for getting next increment and separate computer competency test shall not be required. Withholding of such increment shall remain effective till the receipt of certificate of such passing. After submission of certificate the due increment shall become admissible with retrospective effect, if the delay in grant of certificate is not attributable to the government servant.

(c) Notwithstanding the aforesaid provisions, the provisions regarding age relaxation with respect to passing of examination, if made in any service/cadre Rules, shall remain effective. The instruction issued from time to time with respect to relaxation in passing the departmental examination, for government servants who have completed 50 years of age, on fulfilling certain conditions shall remain effective in such cases also.”

5. It is contended on behalf of the petitioners that computer competency test is only essential for getting next



increment, the certificate of passing a course of DOEACC Society shall be necessary for getting next increment and withholding of such increment shall remain effective till the receipt of certificate of such passing. Thus, it is contended on behalf of the petitioners that computer competency certificate is required only to get increment and confirmation. It has nothing to do with the ACP/MACP or promotion.

6. Confirmation in service and increment are necessary incidents of service. If a person is not confirmed in service and remains on probation, he is not entitled to get promotion to its next higher post. However, on completion of particular years of service, a person is entitled to ACP/MACP, as the case may be, because ACP/MACP is considered as rendering financial benefits to an employee for discharging certain period of service, but not promoted to the higher post.

7. In *Amresh Kumar Singh and Others Vrs. The State of Bihar and Others*, reported in (2023) 2 PLJR SC 423, the Hon'ble Supreme Court on the following factual circumstances held that appellants were appointed as Accounts Clerk, where the minimum qualification was Intermediate. The cadre of Junior Accounts Clerk and Senior Accounts Clerk, which existed prior to 1980, had merged w.e.f. 01.05.1980 and a common cadre of



Accounts Clerk had came into existence in 1999. The de-merger of cadre took place and Clerks came to be retained in their respective cadre without any promotional avenue. The Hon'ble Supreme Court held that the said Clerks were entitled to the benefit of ACP/MACP. Though, they did not fulfill educational qualifications prescribed under the Recruitment Rules.

8. It was held by the Hon'ble Supreme Court, “fulfillment of the educational qualifications prescribed under the Recruitment Rule for the purposes of promotion are not necessary for non-functional in SITU promotion. In other words, educational qualifications required for the purposes of promotion is not necessary for the grant in SITU promotion, that is only for extending the monetary benefit, where there are no promotional avenue and the employees are likely to be stagnated. Therefore, it was held by the Hon'ble Supreme Court that the employer cannot deny financial upgradation by way of granting ACP/MACP considering such benefit as promotion in SITU. However, such employees cannot be promoted to the higher post.”

9. Therefore, there is a difference between grant of ACP/MACP and grant of promotion.

10. Be that as it may, the petitioner nos. 1, 2 and 3 were confirmed in service w.e.f. 01.01.2011, 01.11.2009 and 01.07.2010



respectively. They also passed computer efficiency test. Therefore, they are entitled to ACP/MACP prospectively and also entitled to promotion with effect from the date of passing of computer efficiency test.

11. With the above direction, the instant writ petition is disposed of.

12. The respondent Authorities are directed to accord financial as well as promotional benefit to the petitioners in the light of the observation made in the instant writ petition hereinabove.

13. The part of the impugned order that the petitioners are not entitled to ACP/MACP and any promotion is accordingly quashed and set aside.

14. The order of recovery of excess payment on account of ACP/MACP as well as promotion be also quashed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

